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EXAMINER

DERAKSHANI, PHILIPPE

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**MAILED  
AUG - 8 2002  
GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 24

Application Number: 09379492

Filing Date: 8/23/99

Appellant(s): BURT

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Richard E. Fichter

For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/29/02.

### **(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

### **(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

### **(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

### **(4) *Status of Amendments After Final***

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The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims grouped in the Final Rejection do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) ClaimsAppealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,749,437	Welter	6-1988
2,543,923	Goncalves	10-1984
4341330	Mascia et al	6-1982
3,622,053	Ryden	11-1971

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a

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whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20-22 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goncalves in view of Welter.

Goncalves shows an aerosol dispenser comprising a body 2, a closure 3, flanges 9 and 7 and means for dispensing 13. Goncalves lacks the closure ultrasonically welded to the body. Welter shows two pieces welded ultrasonically to each other to assure a uniform distribution of amplitude of vibration and a resultant uniform bond (see column 1, lines 43-48). It would have been obvious to one of ordinary skill in the art to have modified the Goncalves closure ultrasonically welded to the body as taught by Welter to assure a uniform distribution of amplitude of vibration and a resultant uniform bond.

3. Claims 23- 25, 32-35, 37 and 39 are rejected under 35 U.S.C. § 103 as being unpatentable over Goncalves. in view of Welter as applied to claims 20 above, and further in view of Mascia et al.

Goncalves lacks the flanges rolled and crimped together. Mascia et al. show a closure 16 and body 12 having flat flanges which are rolled and crimped together. It would have been obvious to one of ordinary skill in the art to have modified the Goncalves flanges with flanges which are rolled and crimped together as taught by Mascia et al. as an alternative equivalent means for attaching a close to the body of an aerosol dispenser.

4. Claim 26, 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goncalves in view of Welter as applied to claim 20 above, and further in view of Ryden.

Goncalves lacks the aerosol dispenser an inhaler. Ryden shows an aerosol dispenser an inhaler containing medicaments to deliver prompt response to patients ( see column 1, lines 9-18). It would have

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been obvious to one of ordinary skill in the art to have modified the Goncalves aerosol dispenser with an inhaler containing a medicament as taught by Ryden to deliver prompt response to patients.

**(II) Response to Argument**

As per the decision and remand on 5/1/01 by the board on page 4 the examiner has taken the boards suggestion and applied the Goncalves (French) reference.

Appellant contends there is not motivation to combine Goncalves and Welter. Welter clearly teaches two pieces welded ultrasonically to each other to assure a uniform distribution of amplitude of vibration and resultant uniform bond (see column 1, lines 43-48). Further Welters abstract teaches the ultrasonic sealing is for metal containers such as Goncalves.

Appellant alleges that the flanges are outwardly directed and flat (claim 22). Goncalves shows this limitation in figure 2.

Appellant alleges that the Goncalves cannot be combined with Ryden (claims 26, 38 and 40) because they have different shapes and contents. Appellant merely claims the contained material and an inhaler. Ryde teaches an aerosol dispenser an inhaler containing medicaments to deliver prompt response to patients ( see column 1, lines 9-18).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Philippe Derakshani

PD

August 8, 2002

Conferees

SSB 8/8/02  
JY